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March 4, 2019

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090
Attn: Secretary

Re: Request for Comment - Conditional Small Issues Exemption Under the Securities Act of 1933 (Regulation A) – File No. S7-29-18

Dear Ladies and Gentlemen:

I appreciate the opportunity to submit this letter in response to the request by the Securities and Exchange Commission (the "Commission") for comment on the collection of information requirements within the meaning of the Paperwork Reduction Act of 1995 (the "Paperwork Reduction Act") under the Conditional Small Issues Exemption Under the Securities Act of 1933 (Regulation A), as published in the Federal Register on January 31, 2019 (Release No. 33-10591) (the "January 31 Release").

I recognize that the January 31 Release appears to seek comments in a very narrow context regarding data collection and paperwork burdens on issuers and the Commission in reporting and collecting data about the implementation and usefulness of Regulation A ("Regulation A") of the Securities Act of 1933, as amended (the "Securities Act"). In this regard, I apologize in advance if I am taking liberties in using this process to address a number of issues that I believe have unduly burdened issuers and regulators in implementing the innovative changes made to Regulation A. In light of my experience in dealing with the revised filing, review and qualification process in which I have counseled issuers utilizing Regulation A since 2015, I am writing to suggest certain amendments to alleviate the paperwork and regulatory burden of certain filing requirements and offering amount limitations on Tier 2 issuers filing under Regulation A, namely the time and monetary burden of preparing and filing post-qualification amendments on Form 1-A. I do not believe that any of these suggestions undercuts the necessary checks and balances included in Regulation A for the protection of investors.

To provide some perspective to my comments, Goodwin Procter LLP (the "Firm") represents more than fifteen issuers who have utilized, or plan to utilize, Regulation A since the adoption in June 2015 of the substantive revisions that were made to implement Section 401 of the Jumpstart Our Business Startups Act ("JOBS Act"). Please note, however, that the comments reflected in this letter represent my views alone and are not necessarily the views of the Firm.

1. Regulation A should be amended to increase the aggregate maximum offering amount in any rolling 12-month period to $100 million.

Pursuant to Rule 251 of the Securities Act,[1] Tier 2 issuers under Regulation A may raise an aggregate of $50 million over any rolling 12-month period through the filing and qualification of an offering statement on Form 1-A.[2] Issuers wishing to raise additional capital in excess of this amount in a continuous offering are permitted to file a post-qualification amendment ("PQA")[3] rather than file a new offering statement.[4] Whether an issuer utilizes a PQA or opts to file a new offering statement to cover additional securities in excess of $50 million, either filing must then be reviewed and qualified by the Commission prior to the issuer making any subsequent sales in excess of the $50 million cap.[5]

According to the January 31 Release, the Commission currently estimates that issuers will expend approximately 731 hours to prepare and file an offering statement on Form 1-A, as amended.[6] Besides the number of hours required, issuers will incur substantial monetary costs from outside professionals, including legal and accounting personnel, who are required under Regulation A to provide legal opinions and/or audited financial statements in each offering statement.[7] In connection with these expenses, issuers are forced to spend an increased amount of offering proceeds to pay for such outside professionals. Regulation A thus burdens issuers who are successful in raising capital with significant time and resource constraints when they wish to raise capital over the initial $50 million maximum offering amount.[8] By increasing the maximum aggregate offering amount to $100 million, the Commission would minimize the burden on successful issuers by permitting them to raise 100% more capital before requiring such issuers to file PQAs or new offering statements with the Commission.

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[1] Except as otherwise specifically stated, references to "Rules" in this letter are to Regulation A rules under the Securities Act (17 CFR 230.251 through 230.263).
[2] See 17 CFR 230.251(a)(2).
[3] See 17 CFR 230.251(d)(3)(i)(F) and Note to 17 CFR 230.253(b).
[4] As noted in Comment #2 below, the ability to utilize a PQA rather than filing a new offering statement was a benefit given to small issuers under Regulation A in connection with continuous offerings to lessen the burden on capital raising.
[5] See 17 CFR 230.252(f)(2)(ii).
[6] Conditional Small Issues Exemption Under the Securities Act of 1933 (Regulation A), 84 Fed. Reg. 21 (January 31, 2019) at p. 528. *Federal Register: The Daily Journal of the United* States. Web. 2 March 2019.
[7] See Form 1-A exhibit list; although Regulation A issuers need not obtain an auditor's consent if the financial statements have not changed in a subsequent filing.
[8] My sense from the Adopting Release was that there was uncertainty as to the correct balance to achieve in setting the initial offering limit and that there was certainly an expectation that reasonable minds could differ on what amount was most appropriate. That been said, there appeared to be an expectation that the limit could be raised if the revisions to Regulation A proved to be popular and that issuers did not take undo advantage of the improvements built into the new Regulations. In other words, the $50 million limit recognized the experimental nature of the new regulations while acknowledging that it should be allowed to grow if the new regulations were used responsibly.

The amendment to Regulation A under the JOBS Act specifically directed the Commission to review the offering amount limitation every two years.[9] I respectfully ask that the Commission amend Rule 251 to increase the maximum offering amount for Tier 2 offerings from $50 million to $100 million in any rolling 12-month period.[10] Such an increase would "minimize the paperwork burden on the public and other entities,"[11] while also reducing the monetary and time constraints that arise from preparing and filing either a PQA or an offering statement on Form 1-A.

2. Regulation A should be amended to permit issuers conducting a continuous offering who are otherwise required to file post-qualification amendments once every 12-months, to include in such amendment the ability to qualify an additional $50 million for the following 12-month period, provided such issuers may not sell more than $50 million in any 12-month period.

Pursuant to Rule 251, Tier 2 issuers may raise an aggregate of $50 million during any rolling 12-month period.[12] Such issuers who wish to raise additional capital in excess of this amount may file a PQA on Form 1-A to qualify an amount that, in the aggregate, would not result in the issuer offering more than $50 million over the prior rolling 12-month period. In certain circumstances, intentionally or not, issuers may stagger their capital raise over a 12-month or longer period as permitted in a continuous offering, and raise more money in certain months than in others. For such issuers, Regulation A could potentially require them to file multiple PQAs over a 12-month period in order for such issuer to meet the aggregate offering requirements under Rule 251.

Under current Commission guidance on Regulation A, if an issuer in a continuous offering were to sell $5 million of qualified securities in month one, $5 million in month two and thereafter sell the $40 million remainder of the $50 million cap over the next 10 months, in month 13 such issuer is only able to file a PQA to qualify an additional $5 million of securities. If the issuer wanted to continue its offering, it would need to file consecutive PQAs each month to qualify the amount of securities under the cap that would "free up" each month. In addition, what this means in practice is that, after the first year of a continuous offering under Regulation A, an issuer will never again be able to raise the full $50 million in any subsequent year for so long as the offering remains ongoing.

This requirement to file multiple PQAs over the course of a year creates tens of thousands of dollars in unnecessary expenditures for each PQA filed, as such filings necessitate the legal costs of preparing the documents, obtaining auditor consents, etc., while doing nothing to enhance investor protection or increased disclosure. Further, as each PQA must be reviewed and qualified by the Commission, requiring the filing of multiple PQAs to keep a continuous offering ongoing creates immense operational uncertainty for issuers as it can be difficult to predict how long such qualification

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[9] See Section 3(b)(5) of the Securities Act.
[10] We note that the House of Representatives has already expressed its desire to increase the offering amount limitation to $75 million (H.R. 4263 – passed March 15, 2018 but not taken up by the Senate).
[11] See Paperwork Reduction Act (PRA) Guide Version 2.0, April 2011, available at https://www.opm.gov/about-us/open-government/digital-government-strategy/fitara/paperwork-reduction-act-guide.pdf.
[12] See 17 CFR 230.251(a).

process may take (or if such process will proceed at all in the case of government shutdowns). Finally, I respectfully note that limiting the ability to raise capital under Regulation A in a subsequent year based on the success of capital raising in a previous year inherently penalizes those issuers in which there is the most public interest.

Rule 252 already requires issuers in continuous offerings to file a PQA at least once every 12 months after qualification. By amending Rule 251 of the Securities Act to permit issuers, as part of the required annual PQA filings, to qualify an additional $50 million regardless of the amount such issuers have sold up to that date, the Commission will help minimize the burden on issuers who would otherwise need to make multiple filings. Provided that such issuers do not sell more than $50 million in the 12-month period following the qualification of the PQA, such amendment would minimize the collection of information requirement without changing the substance of Rule 251: issuers would still only be allowed to raise $50 million per year, but could do so without filing multiple PQAs over that period, and incurring the substantial costs and uncertainties associated with such filings.

I respectfully ask that the Commission amend Rule 251 to permit issuers, as part of the annual PQA filings, to qualify an additional $50 million, provided that such issuers may only sell up to $50 million in the 12-month period following the qualification of the PQA. In connection with such a filing, issuers would not be able to "roll-over" any securities that remain unsold under the previously qualified offering statement or PQA.[13] Such an amendment would help minimize the burden of the collection of information imposed on issuers by Rule 251, while still maintaining the $50 million rolling maximum offering amount. As noted in the final release with respect to the adoption of the amendments to Regulation A that were effective in 2015 (the "Adopting Release"),[14] such amendments sought to "continue to allow for certain traditional shelf offerings to promote flexibility, efficiency, and to reduce unnecessary offerings costs."[15]

If the Commission were to adopt the suggestion in Comment #1 above, I believe that the same principles would apply to continuous offerings of up to $100 million per year.

3. Rule 12(g)5-1 under the Securities Exchange Act of 1934 (the "Exchange Act") should be amended to tie its issuer exemption eligibility requirements to those limits provided to "smaller reporting companies" under the Securities Act.

Section 12(g) of the Exchange Act provides the required thresholds at which issuers must register their securities with the Commission. Pursuant to Rule 12(g)5-1, however, Tier 2 issuers under Regulation A are exempt from the Exchange Act's registration requirements if, among meeting other requirements, such issuers have annual revenues of less than $50 million as of their most recently

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[13] Another alternative to this suggestion would be permit issuers to file annually for up to $50 million in additional securities with the self-policing obligation to only sell an aggregate of $50 million of securities in any 12 month rolling period.
[14] Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A), 80 Fed. Reg. 75 (April 20, 2015). *Federal Register: The Daily Journal of the United* States. Web. 2 March 2019.
[15] See Id. at p. 21840, footnote 510.

completed fiscal year.[16] Item 10 of Regulation S-K under the Securities Act establishes the qualifications for an issuer to be considered a "smaller reporting company" (an "SRC"). In September 2018, the Commission increased the revenue limits for a company to be considered an SRC; specifically, a company could be an SRC if it had less than $100 million in annual revenue as of its last fiscal year (an increase of 100% from the previous $50 million revenue limit). Similar to Regulation A issuers, SRCs are afforded scaled disclosure requirements, including less stringent periodic reporting and financial statement disclosure under Regulation S-K and Regulation S-X of the Securities Act.[17] According to the Adopting Release:

> The final rules also provide that the exemption from Section 12(g) is only available to companies that meet requirements similar to those in the "smaller reporting company" definition under Securities Act and Exchange Act rules.[18]

While the revenue requirements were similar at the time of the Regulation A Adopting Release, since September 2018, the revenue limits for an SRC and a Tier 2 issuer are now significantly different, and are burdensome on Tier 2 issuers whose revenues increase beyond the $50 million limit. In particular, once such issuers are required to register their securities with the Commission, these issuers must expend substantial time and money in complying with the enhanced disclosure requirements under Regulation S-K and the full-scale financial statement disclosure under Regulation S-X.

I respectfully request that the Commission amend Rule 12(g)5-1 under the Exchange Act so the revenue limit for Tier 2 issuers is tied to the revenue limit for SRCs. In doing so, the Commission will help minimize the burden of the collection of information by scaling back the disclosure required of those Tier 2 issuers who may in the future be required to register with the Commission, while also ensuring that any future changes to the revenue limits of SRCs automatically result in changes to the revenue limits of Tier 2 issuers.

4. Regulation A should be clarified to permit the 180-day selling extension to apply to annual post-qualification amendment filings.

Rule 251(d) permits issuers conducting continuous offerings to sell qualified securities for up to three years from the initial date of qualification.[19] Prior to the end of the three year period, issuers who file a new offering statement may continue to sell the previously-qualified securities until the earlier of (i) the qualification of the new offering statement or (ii) 180 calendar days after the third anniversary of initial qualification.[20]

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[16] See 17 CFR 240.12g5-1(a)(7)(iv).
[17] See https://www.sec.gov/corpfin/amendments-smaller-reporting-company-definition#_ftn2.
[18] Amendments for Small and Additional Issues Exemptions Under the Securities Act (Regulation A), 80 Fed. Reg. 75 (April 20, 2015) at p. 21820, footnote 199. *Federal Register: The Daily Journal of the United* States. Web. 2 March 2019.
[19] See 17 CFR 230.251(d)(3)(i)(F).
[20] Id.

Rule 252 of the Securities Act requires that issuers file PQAs at least annually to incorporate updated financial statements, or to reflect a fundamental change to the information in a previously-qualified offering statement.[21] However, in contrast to Rule 251(d), Regulation A currently does not permit an issuer to sell previously-qualified securities before a PQA is qualified by the Commission. This collection of information requirement burdens issuers conducting continuous offerings with having to temporarily shut down their sales operation until the Commission qualifies the PQA.

Both the three-year and annual filing requirements were adopted to require issuers to periodically "refresh" their offering statements. I do not believe there is a substantive difference between the two requirements and, therefore, do not see a logical reason to apply a more burdensome standard for the annual PQA filings. Regulation A already conditions the ability of a Tier 2 issuer to sell securities in a continuous offering on being current in its annual and semiannual report filings at the time of sale. Therefore, any updated information, although not technically included in the PQAs, is nonetheless available to investors in the issuer's periodic filings and, as applicable, offering circular supplements.

I respectfully request that the Commission clarifies that the 180-calendar day selling extension that issuers may utilize pursuant to Rule 251 is also available to issuers when filing PQAs under Rule 252. This clarification would minimize the burden on issuers of preparing post-qualification amendments and halting offers and sales in connection with such filings.

5. Regulation A should be amended to permit forward incorporation of periodic and current reports.

Pursuant to Rule 257 of the Securities Act, Tier 2 issuers must file certain periodic and current reports with the Commission.[22] Form 1-A prohibits future incorporation of such filings, meaning that issuers may not include information from such future filings merely by identifying that document in their offering statement. In fact, as noted above, Rule 252 specifically requires the filing of a PQA annually to include (i) updated financial statements, and (ii) any updates that represent a fundamental change to that previously disclosed in the offering statement.[23] Forward incorporation of certain future filings would permit Tier 2 issuers to incorporate into their offering statement information (*e.g.* updated financial statements) that would otherwise need to be filed in a future PQA. Given that the annual PQA filings will still be required, this change would not undercut the liability that attaches to the financial statements under Rule 12(a)(2) under the Securities Act. Forward incorporation of periodic and current reports would help minimize the burden of the collection of information requirements on Tier 2 issuers because such issuers would be able to expend less time and money in connection with preparing and filing updated PQAs. Instead, the information contained in the periodic and current reports filed with the Commission would automatically be incorporated into the issuer's offering statement.

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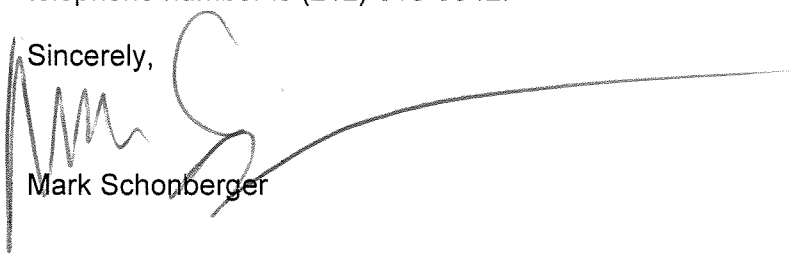
[21] See 17 CFR 230.252(f)(2).
[22] See 17 CFR 230.257(b).
[23] See 17 CFR 230.252(f).

I respectfully request that the Commission amend Regulation A to permit Tier 2 issuers to forward incorporate certain periodic and current reports into their offering statements. This amendment would alleviate the reporting and cost burdens imposed on Tier 2 issuers because it would make the annual PQA filing requirement less of a burden to issuers conducting continuous offerings.

I would welcome the opportunity to discuss any questions with respect to this letter; my telephone number is (212) 813-8842.

Sincerely,



Mark Schonberger

cc: Matthew Schoenfeld